

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MARYLAND

LEADERS OF A BEAUTIFUL STRUGGLE, )  
et al., )  
Plaintiff, )  
vs. )  
CIVIL NO.: RDB-20-0929  
BALTIMORE POLICE DEPARTMENT )  
et al., )  
Defendant. )  
\_\_\_\_\_ )

Transcript of Proceedings  
Before the Honorable Richard D. Bennett  
Tuesday, April 21st, 2020  
Baltimore, Maryland

For the Plaintiff:

Ashley M. Gorski, Esquire  
Brett M. Kaufman, Esquire  
David R. Rocah, Esquire  
Alexia Ramirez, Esquire  
Nathan Freed Wessler, Esquire  
Ben Wizner, Esquire

For the Defendant:

Dana P. Moore, Acting City Solicitor  
Elisabeth Walden, Assistant City Solicitor  
Kara Lynch, Assistant City Solicitor

Also Present: Commissioner Michael Harrison

\_\_\_\_\_  
Christine T. Asif, RPR, FCRR  
Federal Official Court Reporter  
101 W. Lombard Street, 4th Floor  
Baltimore, Maryland 21201

## P R O C E E D I N G S

THE COURT: Good morning. I apologize, I've been saying good morning for the last five minutes I was starting to get worried. I gather we're all on the line now. This is a telephonic hearing on the record in the matter of Leaders of a Beautiful Struggle, et al., versus the Baltimore Police Department, civil action No. RDB-20-0929.

Let me just go over the process here. We're all a little muted, doing the best we can do. We actually have a better system hooked up than we've, perhaps, had in a while. But let's make sure it's functioning properly here. I want to first of all thank my law clerk, Anthony Vitti and the clerk's office for arranging this from various locations. I, myself, am here at the Federal courthouse. This is Judge Richard Bennett. And also I want to thank Christine Asif, our administrative court reporter, our chief reporter who is on the line. Christine, you are on the line?

THE COURT REPORTER: I am. Can you hear me?

THE COURT: Yes, I can. Good morning to you and thank you, Christine.

THE COURT REPORTER: Good morning. Thank you.

THE COURT: There is a standing order, I believe it's now No. 2020-07, pursuant to which all civil and criminal petit jury selections and trials and nonemergency proceedings through June 5 have essentially been extended. But we're

1 conducting this conference call on an important matter  
2 remotely, which is on the record.

3 I would ask that, essentially, the process will be  
4 as follows: I'm going to have everyone introduce themselves  
5 in a moment. Let me just note that it will be very important  
6 for people to identify themselves when they speak.

7 And I would note that all callers here are bound by  
8 the same rules of our court that apply if we were sitting in  
9 the courtroom. Specifically, no recordings or broadcasting of  
10 the proceeding. This entire matter is being transcribed by  
11 Ms. Asif. And a transcript is available to anyone who would  
12 like it, but there is no recording of these proceedings.

13 I think in order to have things work smoothly it's  
14 going to be very important for everyone to mute their phone  
15 when they are not speaking. And then when they need to speak  
16 then unmute it and then introduce themselves and I think that  
17 should work fairly well here.

18 Let me just summarize the posture of this case and  
19 then we will hear -- we'll have counsel identify themselves.  
20 The -- on April the 9th, the plaintiff's leaders of a  
21 beautiful struggle Erricka Bridgeford and Kevin James, the  
22 plaintiffs, commenced this lawsuit against the Baltimore  
23 Police Department and Baltimore Police Commissioner Michael  
24 Harrison, alleging that the Aerial Investigation Research,  
25 acronym AIR Program, violates their rights under the First and

1 Fourth Amendment to the United States Constitution. And that  
2 same day, on April the 9th, a motion for a temporary  
3 restraining order and preliminary injunction were filed  
4 seeking to enjoin and prohibit the Baltimore Police Department  
5 from collecting or assessing any images through the AIR  
6 Program.

7 I promptly scheduled a telephone call with counsel  
8 the same day. And it was agreed that the following schedule  
9 would abide: That pending a decision of this Court on the  
10 motion for preliminary injunction, the Baltimore Police  
11 Department and its agents and its assigns would essentially  
12 agree that no flights to collect, obtain, or access any  
13 photographic imagery would take place until we were able to  
14 conduct this hearing. And then I scheduled a briefing  
15 conference. And this matter has now been fairly briefed and I  
16 thank counsel for their thorough briefing consistent with the  
17 schedule they set forth on April the 9th.

18 And we are now here conducting this preliminary  
19 injunction hearing here on the record. And I have, given that  
20 counsel have very carefully complied with my scheduling order,  
21 I can promise you that I will comply with my requirement. And  
22 that is that I promise I will issue a decision on this motion  
23 by this Friday, April the 24th, no later than 5:00 o'clock  
24 p.m.

25 So that is the procedural posture of this case. And

1 some of the ground rules that I think we should observe to  
2 make sure that this goes smoothly. And with that, if counsel  
3 would identify themselves for the record, first for the  
4 plaintiffs. If counsel would identify themselves for the  
5 record.

6 MS. GORSKI: Good morning, Your Honor. And may it  
7 please the Court, this is Ashley Gorski speaking with the  
8 ACLU, I'm joined by my colleagues Brett Kaufman, David Rocah,  
9 Alexia Ramirez, Nate Wessler and Ben Wizner. Today I'll be  
10 discussing standing issues, PI factors and First Amendment  
11 claim. And my colleague Mr. Kaufman will be discussing the  
12 Fourth Amendment claims.

13 THE COURT: Yes. Thank you very much, Ms. Gorski.  
14 And welcome to all of you.

15 And on behalf of the defendants, the Baltimore  
16 Police Department and Commissioner Michael Harrison.

17 MS. MOORE: Good morning, Your Honor. This is Dana  
18 Peterson Moore, I'm the Acting City Solicitor for the City of  
19 Baltimore, here on behalf of the Baltimore City Police  
20 Department and Commissioner Michael S. Harrison. Joined on  
21 the call today by Lisa Walden who's the chief of legal and  
22 legal counsel for the Baltimore Police Department and Kara  
23 Lynch. And I believe that Police Commissioner Harrison is  
24 also on this call.

25 THE COURT: All right. Good morning to all of you.

1 And with that, let me just suggest that what I think is being  
2 constructive is that I'll give each side just a few minutes,  
3 don't have to make it too lengthy, but five to seven minutes,  
4 if you so desire, to make an opening statement here with  
5 respect to the respective positions. And then my view is that  
6 we should first address the issue of standing in terms of the  
7 challenge by the defendant as to the standing of the  
8 plaintiffs with respect to the Fourth Amendment and First  
9 Amendment challenges.

10 So if that works for everyone, let me first hear  
11 from the plaintiffs for an opening statement. And then I'll  
12 hear from the defense. And then we will proceed with the  
13 matter of standing, starting first with the defendant's  
14 counsel in terms of the challenge to the standing of the  
15 plaintiffs in this matter.

16 MS. MOORE: Thank you, Your Honor. What the issue  
17 here is the most expansive mass surveillance program ever  
18 proposed in an American city. It will subject virtually all  
19 of Baltimore's 600,000 residents, including plaintiffs, to  
20 inescapable surveillance. The surveillance is not it is  
21 imminent. There is no question that plaintiffs have Article  
22 III standing to challenge the AIR Program on Fourth and First  
23 Amendment grounds.

24 Plaintiffs could also establish a likelihood of  
25 success on their Fourth and First Amendment claims on the

1 merits. I'm happy to speak of it more about standing or pause  
2 now.

3 THE COURT: No, let me hear next from the defense in  
4 terms of their opening statement. And then we will proceed  
5 with the defendant's position, being their motion response as  
6 to the standing issue. Opening statement for the defense.

7 MS. MOORE: Yes, Your Honor. Dana Moore again.  
8 Your Honor the AIR pilot program, which is an abbreviation for  
9 the Aerial Investigation Research Program is actually a pilot  
10 program. It presents a remarkable opportunity to test the  
11 efficacy of a constitutional surveillance tool that impinges  
12 not at all on the daily lives of Baltimoreans. It is not  
13 disruptive. It does not go into private lives. It is not  
14 invasive. It is constitutional. We believe, and will argue  
15 momentarily, that none of the three named plaintiffs have  
16 standing to pursue their claims against the city of  
17 Baltimore's Police Department and Michael S. Harrison.

18 The plaintiffs are familiar to us. We very much  
19 appreciate and respect their advocacy and the organizational  
20 efforts on behalf of bringing justice to Baltimore. We value  
21 their work. They are, indeed, part of the solution to  
22 Baltimore's rampant crime problem. But their approach as  
23 advocated in their papers is not the approach that the  
24 Baltimore City Police Department has decided to pursue. And  
25 their approach and their views cannot be permitted to supplant

1 what is clearly a constitutionally reasonable crime fighting  
2 initiative that in no way infringes upon any constitutionally  
3 protected right held by any of the plaintiffs.

4 At the root this lawsuit is driven by the  
5 plaintiff's own view of how the Baltimore Police Department  
6 should respond to the pandemic of violent crime in the city of  
7 Baltimore. We know this because they tell us this in their  
8 declaration. That is what this lawsuit is about. Certainly,  
9 Your Honor, the tactics that the Baltimore Police Department  
10 should use and what strategies it should pursue are policy  
11 decisions correctly and fully entrusted to the police  
12 commissioner, Michael S. Harrison. For these reasons the  
13 Court should reject the plaintiff's efforts to replace the  
14 commissioner's judgment with their own. Thank you.

15 THE COURT: Thank you very much. And with that I  
16 think I misspoke, I want to hear first from the plaintiff in  
17 terms of the standing issue and I apologize. Obviously, to  
18 establish Article III standing a plaintiff must show, one, an  
19 injury in fact; two, a demonstrated causal connection between  
20 defendant's actions and the alleged injury; and show that  
21 the -- third, that the injury will likely be redressed by a  
22 favorable outcome.

23 So that I'll be glad to hear, I think Ms. Gorski,  
24 you indicated that you were going to be presenting the  
25 argument for the plaintiffs on the standing issue. I'll be



1 glad to hear from you.

2 MS. GORSKI: Thank you, Your Honor, of the three  
3 elements of the Article III standing the Court just  
4 identified, the only issue in dispute here is injury in fact.  
5 And I'll begin by speaking briefly about standing for  
6 plaintiff's Fourth Amendment claim.

7 For this claim the plaintiffs have standing because  
8 the BPD, through PSS, will be collecting their sensitive  
9 location information. Case law is clear that plaintiffs have  
10 standing to allege Fourth Amendment injury from the government  
11 collection of records relating to them, regardless of whether  
12 those records are later searched. And under established  
13 precedents, PSS's collection is state action that is legally  
14 attributable to the BPD. The BPD has initiated the  
15 surveillance and it has directed PSS to undertake it pursuant  
16 to the contract. Defendants haven't disputed the close nexus  
17 between PSS and the BPD. They haven't disputed the fact that  
18 they've provided significant encouragement to PSS. And they  
19 have not disputed that PSS is exercising powers that are  
20 traditionally the exclusive prerogative of the state.

21 If the Court disagrees with plaintiff on whether the  
22 AIR Program ultimately violates a reasonable expectation of  
23 privacy, that would be a merits issue not an Article III  
24 standing one. We didn't cite this case in our briefing but  
25 the Supreme Court's decision in *Minnesota v. Carter* from 1998

1 explains that the definition of Fourth Amendment rights is  
2 more properly placed within the purview of substantive Fourth  
3 Amendment law than within that of standing. And the Second  
4 Circuit decision in *ACLU v. Clapper* is further support for  
5 this point. In that case the Court held that the collection  
6 of plaintiff's call records established standing for their  
7 Fourth Amendment claims without reaching the merits of that  
8 claim.

9 I'm happy to speak now about First Amendment  
10 standing if the Court would like or give time over to --

11 THE COURT: Yes, you can go as to -- I would just  
12 note, as I understand it, Ms. Gorski, and I'll hear from  
13 Ms. Moore or Ms. Walden or Ms. Lynch in a moment, but as I  
14 understand it the defendants have essentially taken the  
15 position that your clients don't have standing to challenge a  
16 possible future search. And they have argued, probably not  
17 the first time, certainly, talking about the Supreme Court's  
18 opinion in *United States versus Carpenter* decided in June of  
19 2018, which obviously is a key case for us to be discussing  
20 here at 138 S.Ct. 2206. And the defendants have essentially  
21 argued that in the *Carpenter* case the Supreme Court did not  
22 hold that the cell phone carriers violated the Fourth  
23 Amendment, that it was the government access to that data that  
24 violated the Constitution. Essentially, as I understand it,  
25 the thrust of the position of, again, the defendants I'll hear

1 in a moment, is that until there is a access of the data that  
2 there has not been -- until there's nothing more than a  
3 possible future search. Do you want to respond to that before  
4 you move to the First Amendment?

5 MS. GORSKI: Yes, Your Honor. So I think there are  
6 two issues invited here. The first issue is the state action  
7 issue. And because PSS is acting at the BPD's direction,  
8 PSS's initial collection of plaintiff's information, before  
9 any search takes place, the collection itself, the aerial  
10 surveillance itself, is an injury sufficient for plaintiff's  
11 Fourth Amendment claims. And *ACLU v. Clapper* is very clear on  
12 this point.

13 The 4th Circuit's recent decision in the *Wikimedia*  
14 case is similarly support for this proposition. There the  
15 government argued that the NSA's collection of plaintiff's  
16 communication did not constitute a Fourth Amendment injury and  
17 that only the review of those communications subsequently  
18 would qualify as an injury. And the 4th Circuit was  
19 unpersuaded. It held the fact that the fact that the NSA is  
20 intercepting communications shows that there's an invasion of  
21 a legally protected interest and that suffices for standing  
22 purposes.

23 So one issue is the state action issue. And the  
24 second issue is the notion that there is no injury until an  
25 entity is reviewing or searching through these records. It is

1 clear that PSS is a state actor here and its actions are  
2 attributable to the BPD. And it's clear under the *Wikimedia*  
3 case, under *ACLU v. Clapper* that PSS's initial collection of  
4 this information constitutes a Fourth Amendment injury.

5 THE COURT: Thank you, Ms. Gorski. We'll move to  
6 the First Amendment next in just one second. Just for the  
7 record, for those members of the public or media that are  
8 listening in here, PSS is obviously referring to Persistent  
9 Surveillance Systems, which is the Ohio-based company which  
10 has contracted with the Baltimore Police Department; correct?

11 MS. GORSKI: Yes, Your Honor. And my apologies for  
12 just using the acronym.

13 THE COURT: That's okay. The Legal community  
14 consistently using acronyms. Always believe it's important to  
15 emphasize for the public so they understand, PSS henceforth  
16 for these matters here this morning, refers to Persistent  
17 Surveillance Systems, which is the Ohio-based company, which  
18 is to conduct the aerial surveillance that's at issue here.

19 So with that if you want to address the First  
20 Amendment standing issue as well, Ms. Gorski. And then I'll  
21 hear from counsel for the City and Police Department.

22 MS. GORSKI: Thank you, Your Honor. And one final  
23 note on the Fourth Amendment, you mentioned the defendant's  
24 argument with respect to the *Carpenter* case. And this case is  
25 very, very different from the *Carpenter* case. A cell phone

1 providers are not agents or instrumentalities of the  
2 government. Cell phone providers, when they collect  
3 individual cell site location information, are not doing so at  
4 the behest of the government. Here, in contrast, PSS is  
5 collecting this information at the behest, at the direction of  
6 the BPD. And that means that defendant's *Carpenter* analogy is  
7 entirely misplaced.

8           Moving on now to the First Amendment argument. I  
9 want to emphasize at the outset that defendants do not dispute  
10 the merits of plaintiff's First Amendment claims. The only  
11 First Amendment issue in dispute is the likelihood of  
12 plaintiff's standing. The plaintiffs here have established  
13 three distinct First Amendment injuries, each of which is  
14 sufficient to confer standing. The first injury is the AIR  
15 Program's collection of plaintiff's private associational  
16 information. This collection is itself an injury in fact.  
17 And here I want to underscore that the defendants do not  
18 dispute that plaintiffs' private information will be collected  
19 pursuant to the AIR Program. There's no question that  
20 plaintiffs' location information will be collected by PSS.

21           The second injury that plaintiff's have identified  
22 is the protective measures that they will be forced to take if  
23 the AIR Program is permitted to go forward. These include  
24 plaintiff, Ms. Bridgeford, changing her means of  
25 communication, which will impair her work. And plaintiff

1 Leaders of a Beautiful Struggle altering the timing and  
2 location of its meetings, which will divert staff resources  
3 from other work.

4 And the Supreme Court has been very clear that these  
5 kind of protective measures are cognizable injuries, so long  
6 as the challenged government action is not hypothetical. And  
7 here the AIR Program is not hypothetical. It is imminent.  
8 This case is entirely unlike *Clapper versus Amnesty*  
9 *International* in which the plaintiff's fear of surveillance is  
10 speculative. Here there is no question that plaintiffs will  
11 be subject to the AIR Program and defendants don't dispute  
12 that.

13 Under *Amnesty International*, under *Laidlaw*, under  
14 *Department of Commerce v. New York*, plaintiffs' protective  
15 measures are cognizable injury. Defendants argue that *Amnesty*  
16 forecloses the theory of injury based on protective measures,  
17 but *Amnesty*, in fact, acknowledges and affirms the line of  
18 cases holding that protective measures constitute cognizable  
19 injuries. Cases like *Monsanto* and *Laidlaw*. Again, the  
20 problem with *Amnesty* was that there the plaintiffs' protective  
21 measures were based on hypothetical future harm and that's  
22 just not the case here.

23 The third and final injury the plaintiffs have  
24 identified is that they and the people they associate with  
25 will be chilled. And on this point the defendants devote much

1 of their briefing to *Laird* and *Donohoe*. But the subjective  
2 chill in those cases is very distinguishable from the chill  
3 here. We've explained this in the briefing and I won't  
4 belabor it, but I do want to underscore two key points.

5 First, in *Laird* the plaintiffs there claimed they  
6 were chilled by the mere existence of an otherwise lawful  
7 surveillance program. They did not contest the legality of  
8 the underlying surveillance. Their only complaint was the  
9 chilling effect. And even then they cast considerable doubt  
10 on whether they, themselves, were chilled. Here in contrast,  
11 plaintiffs have argued that the AIR Program violates the  
12 Fourth Amendment. They have also explained that they are  
13 imminently subject to this program and that they have provided  
14 concrete, objective evidence of chill.

15 The second point that I want to emphasize is that in  
16 the *Wikimedia* case, the 4th Circuit recently held that a  
17 plaintiff's allegation that it was chilled by government  
18 surveillance established cognizable First Amendment injury.  
19 Defendants over read *Laird*, they suggest that *Laird* speaks so  
20 broadly that it essentially forecloses a chilling effect  
21 theory of injury in surveillance cases. But *Wikimedia* makes  
22 clear that where the surveillance is not hypothetical,  
23 chilling effects are a basis for standing.

24 THE COURT: Thank you, Ms. Gorski.

25 MS. GORSKI: Thank you.

1           THE COURT: Thank you very much. And before I hear  
2 from defense counsel, I would just note, so the record is  
3 clear, that pursuant to the complaint that was filed and the  
4 affidavit attached thereto on April 9th, just so I'm clear as  
5 a matter of the record, the plaintiff, Leaders of a Beautiful  
6 Struggle is a limited liability company founded in 2010, and  
7 according to the affidavit of Dayvon Love, the director of  
8 public policy for that organization, it seeks to advance the  
9 public policy of, quote, black people in the city through  
10 youth leadership, development, political advocacy, and  
11 autonomous intellectual innovation.

12           And then, again, pursuant to the declarations  
13 attached to the complaint that was filed, the plaintiff,  
14 Erricka Bridgeford is a community activist in Baltimore and  
15 the cofounder of Cease Fire Baltimore 365, which is, according  
16 to the affidavit, organizes quarterly, quote, cease fire  
17 weekends, end of quote, in Baltimore City. And then the  
18 plaintiff Kevin James is listed as an activist and community  
19 organizer. And his declaration is that it's in the Baltimore  
20 area. I don't know that he specifically listed that he's a  
21 resident of the city of Baltimore, but that is contained in  
22 the affidavit.

23           Is that a fair summary in terms of what has been  
24 filed thus far?

25           MS. GORSKI: Yes, Your Honor.



1 THE COURT: Okay. Thank you very much. And so with  
2 that on the standing matter, Ms. Moore or Ms. Walden or  
3 Ms. Lynch, I'll be glad to hear from you on behalf of the  
4 Baltimore Police Department and/or Commissioner Harrison.

5 MS. MOORE: Dana Moore, I'll begin. Your Honor --  
6 hello, can you hear me?

7 THE COURT: Yes, I can hear you. Yes.

8 MS. MOORE: All right. I heard another voice, I  
9 thought.

10 THE COURT: That's all right.

11 MS. MOORE: But Your Honor is correct, the  
12 defendants do assert that there is no injury to any of the  
13 plaintiffs unless and until the Baltimore Police Department  
14 accesses or otherwise uses the information as to a particular  
15 specific plaintiff. It's important to note, after Your Honor  
16 has decided, you know, a little bit more about each of the  
17 plaintiffs. They can always move forward for actions that  
18 impact them, they are not suing on behalf of either Baltimore  
19 or on behalf of an organization, they can only pursue claims  
20 for and related to themselves.

21 So with that, the -- we believe that the AIR Pilots  
22 Program can't even theoretically violate any of their  
23 constitutional rights, as I said, until the Baltimore Police  
24 Department accesses or otherwise uses the information as to  
25 them. Your reference to *Carpenter*, we think is very

1 instructive and very telling. The *Carpenter* case made clear  
2 that collecting the data was not the problem, it was how the  
3 data was used and collected and stitched together.

4 Here the -- we believe that it's not -- the  
5 collection of data alone cannot be grounds for asserting First  
6 or Fourth Amendment standing. For Your Honor to find  
7 otherwise you would have to overturn 35 years of jurisprudence  
8 that makes clear that aerial surveillance is within -- is  
9 constitutionally reasonable. Plaintiffs in this case have not  
10 shown any data that -- any fact or any indication that their  
11 own individual movements would ever be reviewed by the  
12 Baltimore Police Department or even, you know, PSS through the  
13 AIR Program.

14 There's a reason for that. The AIR Program is not  
15 able to reveal physical characteristics of individuals or  
16 vehicles. The data that is collected is only reviewed under  
17 certain limited circumstances. Specifically, if there's a  
18 call that is assigned an incident number that relates to one  
19 of the four enumerated terms, that is the only way that anyone  
20 or anything would be identified through the AIR surveillance  
21 program.

22 Plaintiffs are -- what they're seeking here is a  
23 preliminary injunction. And they can't get a preliminary  
24 injunction on the contingency that at some time in the future  
25 it's possible that their constitutional rights might be

1 violated. And the only way that this could happen is if they  
2 were near a crime. This is speculative. And that is not the  
3 purpose of an Article III claim. That's not grounds -- that's  
4 not appropriate grounds for the issuance of a preliminary  
5 injunction.

6 Here, the plaintiff's constitutional rights are not  
7 implicated, again, unless and until the Baltimore Police  
8 Department uses the data collected by the AIR Program to track  
9 movements that are attributed to them. That has not happened.  
10 That is not likely to happen. With respect to Leaders for a  
11 Beautiful Struggle, they're -- in reading the declaration all  
12 of their assertions are speculative. They use the words we  
13 worry about surveillance, we're gravely concerned about  
14 surveillance, we expect that their partners might change how  
15 they interrelate with them, information could be recognized.  
16 These are fears. These are not real injuries that have  
17 actually occasioned to them or even are likely.

18 With respect to Ms. Bridgeford's declaration  
19 there she states that it's likely that the Baltimore Police  
20 Department would generate an individualized report about her.  
21 But that is not even remotely likely, given the purpose,  
22 limited scope, limited use of the AIR Program. She asserts  
23 that the AIR Program threatens her ability to effectively  
24 conduct her work that she does for Cease Fire. But, again,  
25 that is speculative. That is a forward-looking fear. It's in

1 paragraph 17 that she really gets to the nub of her claim,  
2 which is she feels that the AIR Program is -- and this is, you  
3 know, right from the declaration -- is a lazy form of  
4 policing. And that real nub here. That's the real injury  
5 that they disagree with the use and the purpose of the  
6 program.

7 With respect to Kevin James, again, his claims are  
8 speculative. I believe that I would be in the vicinity of the  
9 crime. This is all speculative. None of this has actually  
10 happened. There's been no actual injury. He's looking very,  
11 very forward into time about the possibility maybe that he  
12 would associate with someone who was near a crime. These are  
13 not injuries that can confer today, standing to pursue a  
14 preliminary injunction. Thank you.

15 THE COURT: Ms. Moore, you had noted in the papers,  
16 on behalf of the Police Department and the Commissioner, that  
17 the -- not only your view that the collection of the data  
18 cannot be a search, but that PSS is a third party, not a  
19 government actor. But clearly PSS in exercising powers of the  
20 state, it carries out state action for purposes of Section  
21 1983; correct?

22 MS. MOORE: I don't think we make that claim. I  
23 think that plaintiffs make that claim, Your Honor.

24 THE COURT: No, what I'm saying is that it's clear  
25 that, just quickly with respect to standing on the matter, of

1 whether or not it is speculative and whether or not it  
2 satisfies injury in fact, in terms of the contention that it's  
3 an unconstitutional search by way of aerial surveillance there  
4 is no dispute, is there, that to the extent that PSS exercises  
5 powers pursuant to the contract with the City of Baltimore,  
6 with the Police Department, it is exercising state action  
7 essentially, that's not really an issue, would you agree with  
8 that.

9 MS. MOORE: Sure. Yes.

10 THE COURT: All right. I'm just trying to make sure  
11 that we're clear on that.

12 Ms. Gorski, anything further on the standing issue in  
13 rebuttal?

14 MS. GORSKI: Thank you, Your Honor. I think now it  
15 is very clear that defendants concede that PSS's initial  
16 collection of information is attributable to the BPD. And it  
17 is also clear that defendants are not disputing that  
18 plaintiffs will be subject to PSS's initial collection. As I  
19 mentioned earlier, the 2nd Circuit decision in *ACLU v. Clapper*  
20 makes very clear that this collection itself is a cognizable  
21 Fourth and First Amendment injury.

22 The Fourth Circuit's opinion in *Wikimedia* also makes  
23 this point clear. The government had argued in its  
24 briefing -- isn't flushed out in the opinion, but if you read  
25 the appellate brief it is clear that the government argued in

1 its briefing that the collection alone was not an injury. And  
2 the 4th Circuit rejected that argument.

3 Just a couple other quick notes. Defense counsel  
4 referred to 35 years of precedent and the fact that in finding  
5 standing for plaintiffs this Court would have to overturn 35  
6 years of precedent, we obviously disagree with defense  
7 counsel's view of the aerial surveillance cases, from the  
8 decades old aerial surveillance cases. But those questions go  
9 to the merits, not to standing.

10 And then finally, defendants characterize as  
11 entirely speculative the plaintiffs' assertions that they are  
12 also substantially likely to have the BPD and PSS develop  
13 individualized reports on them, on both plaintiff James and  
14 plaintiff Bridgeford. Plaintiff Bridgeford having explained  
15 that they're substantially likely to be in the vicinity of one  
16 of the four target crimes. And there's no evidence to the  
17 contrary in the record. They have clearly established a  
18 substantial risk that they would be subject to individualized  
19 reporting.

20 So while the collection alone is sufficient to  
21 establish their standing, in addition to plaintiff under  
22 substantial risk standard articulated in the Supreme Court's  
23 decision in *Susan B. Anthony List*, these two plaintiffs have  
24 also established standing with respect to the individualized  
25 reporting. Thank you, Your Honor.

1 MS. MOORE: Your Honor? May I respond briefly, Your  
2 Honor?

3 THE COURT: Yes. Go ahead, Ms. Moore.

4 MS. MOORE: Okay. So with respect to the collection  
5 of data, it's very important to understand and to note that  
6 the images that will be collected through the AIR Pilot  
7 Program will be collected at a -- at one pixel per person,  
8 which you cannot identify a person, you cannot identify a  
9 specific car, you can't determine what a person's ethnicity  
10 is, you can't determine any distinctive clothing. There will  
11 not be any indication of who or what is captured by the data  
12 unless and until there's a relevant crime that then is able to  
13 link up to the site and use additional surveillance tools that  
14 are already present in Baltimore. So when the plaintiffs  
15 assert that they're fearful that there will be an  
16 individualized report created by them, that is mere  
17 speculation.

18 And with respect to Ms. Bridgeford she, in her own  
19 declaration, states that her work causes her to be present at  
20 the scene of a murder within hours after the murder has  
21 occurred or up to two weeks thereafter. So her work, by its  
22 own definition and description, does not cause her to fall  
23 within the scope and purpose of the AIR Pilot Program. The  
24 AIR Pilot Program is intended to look at what happened, when  
25 it happened, not after a crime has occurred. So she, by

1 definition, by her own words, takes herself out of the scope  
2 and range of the AIR Pilot Program.

3 And with respect to Kevin James, his description of  
4 a work is very vague, it's very speculative, the likelihood  
5 that there would ever be an individualized report about him is  
6 really slim to none, just based on his own description of the  
7 work that he does and how he navigates the public ways of  
8 Baltimore.

9 It's also -- I wanted to include that with respect  
10 to the chill, the plaintiffs do use that word in their  
11 declaration. And, again, there is not a specific present  
12 objective harm or threat, or specific future harm to any of  
13 these plaintiffs. These are all plaintiffs that do their work  
14 very publicly. They rely on media and social media to advance  
15 their causes. But they are not individuals that are even by  
16 their years of description of their work, present at any of  
17 the specified crimes that are the subject and focus of the AIR  
18 Pilot Program.

19 THE COURT: Just to finish up and go to the matter  
20 of the preliminary injunction and the standards, I would just  
21 note that, Ms. Moore, that the 4th Circuit has held -- when it  
22 comes to the matter of the First Amendment claim, the 4th  
23 Circuit has held consistently that standing requirements are  
24 somewhat more relaxed in First Amendment cases; correct?

25 MS. MOORE: I'm not going to argue with Your



1 Honor.

2 THE COURT: I mean, I think that really the First  
3 Amendment claim follows the Fourth Amendment claim. I think  
4 that the whole issue of standing really does focus, I think,  
5 on the matter of the Fourth Amendment claim. And the thrust  
6 of this, just so members of the public who are monitoring  
7 this, just I think, when all is said and done, the issue here  
8 on the matter of standing is that the plaintiffs argue that  
9 the injury in fact is the collection of the imagery data,  
10 which itself constitutes a search under the Fourth Amendment,  
11 with the actions of Persistent Surveillance Systems being  
12 attributable to the Baltimore Police Department. Is that a  
13 fair one sentence summary of the plaintiffs' position,  
14 Ms. Gorski?

15 MS. GORSKI: Yes, Your Honor.

16 THE COURT: Okay. And from the point of view of the  
17 defendants, the defendants have essentially argued that there  
18 is no standing to challenge a possible future search with  
19 respect to the data that was captured by PSS and may or may  
20 not be reviewed by the Baltimore Police Department. Is that a  
21 fair one sentence summary from your point of view, Ms. Moore?

22 MS. MOORE: Yes, Your Honor. And I would just add  
23 that all of the data that is collected is based on what is  
24 available in the public view. There is no reach into private  
25 spaces. And so there is no reasonable expectation of privacy

1 as any of these plaintiffs navigate Baltimore's public ways.

2 THE COURT: All right. We'll get into the matter of  
3 that on the merits in a minute, in terms of likelihood of  
4 success on the merits, but I think that just for purposes  
5 public consumption I think I fairly summarized what the  
6 standing issue is. Plaintiffs position being that the injury  
7 in fact occurs the minute of the collection of imagery data,  
8 which they contend itself constitutes a search. And the  
9 actions of the private company are attributable to the police  
10 department. And the defense position is that is speculative  
11 and it's a possible future search.

12 So with that, let me just focus if we can next on  
13 essentially the criteria here with respect to a preliminary  
14 injunction. As you all well know, the standard for granting a  
15 preliminary injunction, as set forth under Rule 65 of the  
16 Federal Rules of Civil Procedure. It is clearly a, and  
17 consistently held to be, an extraordinary remedy involving the  
18 exercise of very far reaching power to grant a preliminary  
19 injunction. And in determining whether to issue a preliminary  
20 injunction this Court must follow a test as set forth by the  
21 United States Supreme Court in *Winter versus Natural Resources*  
22 *Defense Council*, 555 U.S. page 7, a 2008 opinion of the  
23 Supreme Court.

24 And essentially the factors that we will be  
25 addressing this morning are, first, the movant must be likely

1 to succeed on the merits. Secondly, the movant, the  
2 petitioner, the plaintiff is likely to suffer irreparable harm  
3 absent preliminary injunctive relief. Third, that the balance  
4 of equities favors the movant, the plaintiff in a case. And,  
5 finally, that an injunction is in the public interest. That  
6 is the clear criteria here, which the Court must address this  
7 morning.

8 And the 4th Circuit authority on that in recent  
9 cases is *League of Women Voters of North Carolina versus North*  
10 *Carolina* 769 F.3d 224, a 4th Circuit opinion in 2014. So that  
11 is the standard here. And it is -- essentially the plaintiff  
12 must show more than a grave or serious question for  
13 litigation, instead it bears the heavy burden of making a  
14 clear showing that it is likely to succeed on the merits so  
15 we're not deciding this case today in this hearing, but we are  
16 dealing with the matter of whether or not the plaintiffs  
17 satisfy those criteria, so as to be entitled to a preliminary  
18 injunction.

19 So what I propose to do here now on this analysis is  
20 to proceed in that fashion with the -- first, the criteria of  
21 the likelihood of success on the merits. And we'll focus  
22 first upon the Fourth Amendment claims set forth in Count 1,  
23 the issues being whether the -- we'll call it the AIR Program,  
24 which is essentially the Aerial Investigation Research.  
25 Again, for members of the public, the legal community loves

1       acronyms. But the AIR Program is for the Aerial Investigation  
2       Research. And then secondarily -- first, whether it  
3       constitutes a search within the meaning of the Fourth  
4       Amendment. And secondly is the program reasonable under the  
5       Fourth amendment.

6               And with that I'll be glad to hear from plaintiffs  
7       counsel. And I believe Ms. Gorski you indicated that I  
8       thought you said Mr. Wizner or Mr. Kaufman or Mr. Wessler  
9       would be addressing that; is that correct?

10              MS. GORSKI: Your Honor, Mr. Kaufman will be  
11       addressing the plaintiff's Fourth Amendment --

12              THE COURT: Mr. Kaufman, glad to hear from you.

13              MR. KAUFMAN: Thank you, Your Honor. Glad to join  
14       you here. As Ms. Gorski pointed out, the BPD's program is the  
15       most ambitious surveillance program ever deployed in an  
16       American, using military technology that has the potential to  
17       drastically change our democratic society. It's a system that  
18       will create, for the use of law enforcement, a rolling 45-day  
19       log of plaintiffs' and other Baltimorean's movements. It  
20       imagines no role for the judiciary at all. And all of that  
21       amounts to an unconstitutional search under the Fourth  
22       Amendment.

23              Now, first defendants collection of plaintiff's  
24       location information is a Fourth Amendment search, which is  
25       the threshold question under the Fourth Amendment. And the

1 main reason is simple, no one anywhere reasonably expects that  
2 government cameras in the sky will record their whereabouts,  
3 and those of an entire city's population, second by second.  
4 Now, the BPD argues that this isn't what their program does.  
5 Because it says we will only collect dots. Ms. Moore said  
6 today that this program does not go into private lives. But  
7 this is wrong. First putting aside for one second the dots.  
8 The underlying location information that will be collected  
9 under this program is far more rich and specific than the  
10 information even at issue in *Carpenter*. There, cell site  
11 sectors can be quite large. But here movements will be  
12 captured down to a yard.

13 Now, as to the BPD's argument about dots and the  
14 identifiability of images that the program will capture second  
15 by second over the entirety city, in *Carpenter* the Supreme  
16 Court rejected the proposition that influence insulates the  
17 search and that's something that dated back to the *Kyllo* case  
18 years before. The Court observed in *Carpenter* that the  
19 government could, in combination with other information,  
20 seduce a detailed log of the defendant's movement. And that  
21 was sufficient to render it identifying and trigger the Fourth  
22 Amendment.

23 And it's also worth pointing out that the  
24 information at issue in *Carpenter* was not automatically  
25 identifiable to a person or their ethnicity or their race or

1 their name, because requests for cell site information are  
2 made as to phone numbers. And so when a request is made, you  
3 know a phone number and you link that with general location  
4 information, but you still have to go through investigative  
5 steps to link that to a name. And we pointed out in a reply  
6 brief, in the 6th Circuit decision that went up to the Supreme  
7 Court in *Carpenter*, there's a nice explanation of all the work  
8 that the FBI agents had to do just to link the location  
9 information and make it meaningful as to the defendants.

10 Third, it will be exceedingly easy for the BPD to  
11 identify the dots. And we go through this in our initial  
12 brief on page 17, but it's worth just pointing out a few  
13 points from there. First, it is easy to roll tape backwards  
14 and forwards in time and find locations that are automatically  
15 identifying to certain people. Next, we point a study out in  
16 our briefing that shows that -- and this is an unsurprising  
17 finding I think -- that just four unique location points are  
18 enough to identify 95 percent of people. And this makes  
19 sense, it goes to the heart of the rationale in *Carpenter*.  
20 Which is that the whole of our movements, whether or not one  
21 point by itself is observable by another person, are unique to  
22 us. And they reveal sensitive information and they implicate  
23 a lot about our private lives. And that deserves protection  
24 under the Fourth Amendment.

25 Another reason that it would be easy to convert

1 these dots into people, these elements of the BPD and PSS's  
2 own contract it's written right in there, that PSS will  
3 integrate data from the city's closed circuit television  
4 security cameras as well as its automatic license plate  
5 readers, in order to ensure that people are identified. And  
6 make no mistake, the AIR Program exists to identify people.  
7 And even ignoring the use of CCTV or ALPR, as I explained just  
8 now, the collection is a search because identification is  
9 easy, but these systems make identification even more  
10 attributable. And they're properly considered relevant to  
11 that question. The BPD puts them into the contract. PSS will  
12 have direct linkages to information. It even talks about  
13 reformatting some of the data systems to more easily digest  
14 that information. It doesn't go into specifics. And so those  
15 things bear very strongly on whether, as Ms. Moore says, this  
16 program does not go into private lives.

17 Another point here is that this -- the collection of  
18 this information is not simply an assortment of dots or  
19 tracks, it is a time machine. Never before did police have  
20 perfectly reconstructed even one person's past movements over  
21 days or 12 hours or weeks or months. And never could they  
22 even dreamed of reconstructing a entire city's populations  
23 movements that way. And that goes, again, to the heart of  
24 what the *Carpenter* court was concerned about. Because this  
25 data collected by defendants will grant the police access to a

1 category of information that is otherwise unknowable.

2 The government points to, you know, it has a few  
3 other arguments about why this is lawful. And first it argues  
4 that these cases from the 1980s about aerial surveillance  
5 prove that aerial surveillance, period, is constitutional  
6 under the Fourth Amendment. And I don't want to belabor the  
7 arguments here, I think we've pointed it out multiple times,  
8 but those three cases approved of transitory, targeted,  
9 naked-eye surveillance of static locations, not long-term,  
10 indiscriminate, technology-assisted surveillance of people's  
11 movement. And even in the 1980s, after these cases came out,  
12 if you look at our brief on footnote 45 in the first brief, we  
13 point other courts that at that time, understood that the  
14 limitation on those holdings and the fact that they were not  
15 speaking to uses of advanced technology, like the AIR Program  
16 put into place, you know, about 25 to 35 years later.

17 THE COURT: Mr. Kaufman, if I could just interrupt  
18 you just for one second, just so we're clear.

19 MR. KAUFMAN: Sure.

20 THE COURT: I didn't mean to interrupt your  
21 argument. I just want to make sure we're clear. You're not  
22 suggesting that this is a 24/7 program, 24 hours a day, 7 days  
23 a week, because as I understand the Professional Services  
24 Agreement, which has been filed here and actually is, I think  
25 an addendum to your complaint filed on April the 9th, the



1 planes are to fly about 40 hours per week over a six-month  
2 period, and they are essentially designed to provide  
3 recordings of past activities not live surveillance, correct?  
4 So we're not talking about a camera in the sky that's  
5 constantly on 24 hours a day, 7 days a week; correct?

6 MR. KAUFMAN: That's right, Your Honor. And the  
7 defendants point out that this is just going to be 12 hours a  
8 day and they believe that that's a proper frame. And we  
9 strongly disagree with that.

10 First of all, this is daily collection. This is not  
11 a one-time, 12-hour flight. This is daily collection, 12  
12 hours a day, we're talking about 80 hours a week, that will be  
13 held for 45 days automatically. So to try -- I understand why  
14 defendants would like to ship the frame into a 12-hour mode.  
15 But that's just not even on the terms of what the defendants  
16 have offered in their contract what is going to happen.

17 Now, absolutely, we would say that 24-hour,  
18 round-the-clock surveillance is worse than 12, but this is  
19 still the most comprehensive mass surveillance program ever  
20 deployed in an American city. I think if you're thinking  
21 about reasonable expectation of privacy, I don't think that it  
22 is reasonable, or people reasonably do expect that there will  
23 be this kind of surveillance for 12 hours a day either. So I  
24 don't think that narrowing the time frame to 12 really helps.  
25 It also raises a question of how long of a break the

1 defendants think sufficiently reset the clock on their  
2 surveillance. And they haven't suggested that there is a  
3 magic number there. And I don't think there is one. And  
4 that's because in reality, this is a constant, for all  
5 practical purposes, this is constant surveillance every day,  
6 aggregated over a 45-day rolling period. And so focusing on  
7 the 12 hours is just not enough.

8 I also point out, the BPD argues in its brief that,  
9 you know, it's not continuous, so leaving the numbers aside  
10 this isn't continuous surveillance. And so, therefore,  
11 *Carpenter* doesn't touch it and it's a constitutional program.  
12 But in *Carpenter* it was not continuous surveillance either,  
13 this is cell phone tracking. And you can leave your phone at  
14 home. You can turn it off. And the times that data is  
15 generated when you're using your cell phone, is not a minute  
16 by minute catalog of your movements automatically. It's  
17 whenever the cell phone talks to the tower. Here this is a  
18 second-by-second capture. And so as I said, at the top, it's  
19 a much more rich pool of data than even was at issue in  
20 *Carpenter*. We've also pointed to some courts that I don't  
21 think you need to even go there, but there has been a lot of  
22 suggestion that *Carpenter*'s reasoning would even apply to  
23 shorter collection of location information using advanced  
24 technology. And so I just think that the 12-hour focus is not  
25 a winning argument for the defendants here.

1           Ms. Moore also suggests and the defendants in their  
2 briefing also suggest that there is some blanket rule that  
3 people lack a reasonable expectation of privacy when they are  
4 in public, full stop. That's just not the case. The main  
5 case they cite for that is *Knotts*. And *Knotts* itself cabins  
6 its holding to movements from one place to another. The  
7 *Carpenter* court doubled down on that reading of *Knotts*  
8 explaining that it involved a discrete automotive journey.  
9 And that is a very different kind of surveillance than what  
10 the AIR Program proposes to do. And even *Carpenter* itself,  
11 talking about its own holding, said this case is not about  
12 using a phone or a person's movement at a particular time.  
13 It's about a compendium of movements and what the whole of  
14 those movements add up to in terms of revealing the  
15 intricacies and the privacies of a individual life.

16           The other case the government tries to use to argue  
17 about no expectation of privacy when you're in public is  
18 *Jones*. But there five justices agreed, in concurring  
19 opinions, that longer term location tracking violates a  
20 reasonable expectation of privacy, regardless of whether those  
21 movements were disclosed to the public at large. So, again,  
22 there is no rule that when you are in public you forfeit your  
23 Fourth Amendment rights. And certainly any sort of gesture at  
24 that rule through *Carpenter*, post *Carpenter*, just absolutely  
25 cannot survive.

1           Just a couple more points on the Fourth Amendment  
2     argument. There is no exception to the warrant requirement  
3     for this program under the special needs doctrine. The  
4     defendants don't even use that phrase. And I think that's  
5     because it's just not available to them. Ms. Moore today said  
6     this is was a constitutionally reasonable crime fighting  
7     initiative. The contract says that the purpose of this  
8     program is to assist BPD in investigating and reducing violent  
9     crime in Baltimore City. These are classic law enforcement  
10    needs, that do not qualify under the special needs doctrine to  
11    excuse the government from getting a warrant.

12           And related, both cases also emphasize that the  
13    gravity of the threat alone cannot be dispositive of whether  
14    law enforcement's actions are constitutional or reasonable.  
15    And as the defendants have acknowledged, our plaintiffs are  
16    very involved in Baltimore in trying to solve the ills that  
17    are afflicting the community and their communities every  
18    single day. But whether or not the BPD is the proper policy  
19    making entity to come up with solutions, the Constitution put  
20    some of those policy off limits. And it certainly puts the  
21    AIR Program off limits. Go ahead, Your Honor.

22           THE COURT: Go ahead. Just you mentioned *Jones*. I  
23    would note that the *Jones* case in 2012, which involved the  
24    placement of the Global Positioning Device, the GPS device on  
25    the vehicle, the five votes in the majority did not all agree

1 on the same premise. Justice Scalia did not even address the  
2 *Katz*-based, reasonable expectation of privacy framework, he  
3 essentially evaluated it in the context of trespass. And some  
4 of his colleagues who voted with him did address the  
5 *Katz*-based analysis; correct?

6 MR. KAUFMAN: That's correct, Your Honor. I didn't  
7 mean to -- I hope I didn't imply that the majority --

8 THE COURT: No, no, just so the record's clear that  
9 the -- we're looking at -- although I'm reading the  
10 *Carpenter* -- I note Mr. Kaufman that you and Mr. Wizner and  
11 Mr. Wessler were actually counsel in the *Carpenter* case before  
12 the Supreme Court; correct?

13 MR. KAUFMAN: We were, Your Honor.

14 THE COURT: And I've noted that, obviously, Justice  
15 Kennedy in his dissent was critical of the whole *Katz* analysis  
16 and reasonable expectation of privacy that really -- that is  
17 really the analysis that we undertake in the aftermath of  
18 *Jones* and certainly after *Carpenter* in terms of the,  
19 essentially, the expectation of privacy set forth in the 1967  
20 opinion of *Katz versus the United States*. That is the  
21 analysis that has to apply here; correct?

22 MR. KAUFMAN: That is correct, Your Honor. And just  
23 back to the point about *Jones*, yes there was five justices  
24 agreeing in concurrence on a *Katz* theory, but I think it's  
25 proper to read *Carpenter* as basically implementing those views

1 as the law of the land. The opinion in *Carpenter* cites those  
2 concurrences multiple times throughout its analysis. And so I  
3 think it's reasonable to go back and read the meeting of those  
4 five concurring justices minds as endorsing the arguments that  
5 I was just talking about.

6 I just have one final point on the Fourth Amendment  
7 merits. Because the government has not even offered a special  
8 needs argument, the fact that this is a warrantless program  
9 ends the inquiry for the Court on reasonableness, because that  
10 is how the analysis operates. But I do want to just comment  
11 on some of the arguments about the BPD's rules that it has put  
12 in place through contracts, some of which needs to be -- have  
13 been expanded upon in more detail in Mr. McNutt's declaration.  
14 But even taking these rules, on their own terms, they are  
15 unreasonable under the totality of the circumstances, which  
16 would be the analysis if you somehow did get into a  
17 reasonableness analysis there would be totality of the  
18 circumstances.

19 Just very quickly, one, there's no judge involved in  
20 this program at all. And if you look back at the *Riley*  
21 decision from the Supreme Court several years ago, there's  
22 that wonderful quote from Chief Justice Roberts where he says,  
23 "the revolution was not fought for the right to government  
24 agency protocols." And that is exactly what the BPD is  
25 offering here. It is offering an unwarranted system that is

1 not supervised by the judiciary, and making promises that the  
2 executive will respect the rights of individuals. And that's  
3 simply, as the Court explained in *Riley*, not how the Fourth  
4 Amendment works.

5 Another point on reasonableness is that because the  
6 collection is so enormous at the outset, minimization of  
7 irrelevant data or the private data of people who do not come  
8 under suspicion later on needs to be strictly implemented at  
9 the back end. And that is just simply not the case here. We  
10 have a 45 rolling day log of basically 600,000 people at a  
11 time. And the fact that that data has promised to be deleted  
12 at the end of that period is certainly not the kind of strict  
13 minimization requirement that the Fourth Amendment would  
14 propose, even if we were in a reasonableness analysis.

15 Another point, the unauthorized use of data by PSS  
16 is subject only to PSS self reporting. That is not the kind  
17 of contract term or minimization requirement or even  
18 government protocol that you would expect to see in a Fourth  
19 Amendment compliant situation.

20 So I think I'll rest there. If the Court has any  
21 questions I'm happy to answer them.

22 THE COURT: Well, I may in a minute. But let me  
23 just hear from the Police Department and from the City  
24 Solicitor's Office and I may have questions to follow up on  
25 all this.

1 Ms. Moore or Ms. Walden, whoever wants to address  
2 this, be glad to hear from you.

3 MS. MOORE: Your Honor, I'll begin and would ask  
4 that Ms. Walden, if I overlook something she feel free to step  
5 in. And I want to begin by agreeing with Your Honor that we  
6 believe that the considerations on whether or not to grant a  
7 preliminary injunction are as you stated, set out in Winter  
8 versus Natural Resource Defense Council, which is a 2008 case.  
9 We agree with the four factors that we enunciate and agree  
10 that all four factors must be met. They have to be considered  
11 separately. Most importantly there is a presumption that a  
12 preliminary injunction will not issue.

13 In this case that presumption has not been met.  
14 Here's why: The AIR Program does not constitute a search.  
15 Much of what plaintiff's counsel has said in describing the  
16 program is not correct. First of all, it is not a rolling 45  
17 day, continuous collection of data. This, in my opinion, is  
18 one of the frailties of the program, it can only collect --  
19 and this is by agreement and by technology -- 12 hours of data  
20 per day. It can only -- the AIR Program can -- it's done by  
21 three airplanes, you know, flying over Baltimore. And they  
22 can only fly weather permitting. The planes cannot collect  
23 data at night. The data that is collected cannot -- and I  
24 said this before -- cannot identify a specific individual. It  
25 cannot identify a specific automobile. It cannot identify



1 demographic. It cannot identify clothing. It's not designed  
2 to do that and it's not able to do that. The fact that there  
3 is not a continuous surveillance or continuous collection of  
4 data, we believe takes this squarely out of the *Carpenter*  
5 consideration.

6 I also want to address the argument that there's,  
7 quote, no judge involved in this program at all. And here  
8 it's helpful to remind everyone on this call that the  
9 Baltimore City Police Department is a police department that  
10 is under consent decree. We are -- we meaning the police  
11 department and Commissioner Harrison and all of his officers,  
12 are beholden to use the Court -- the police court monitors,  
13 the monitoring team whenever they are attempting to do  
14 something novel. And that's exactly what happened here. Back  
15 in December of 2019, when Commissioner Harrison determined  
16 that, yes, we will try this, yes, we will institute this pilot  
17 program, one of the first things he did was consult and confer  
18 with the police monitoring team, consent decree monitoring  
19 team, to let them know, along with the Justice Department,  
20 that this is a decision that the police department in  
21 Baltimore City has made.

22 And, of course, all of the decisions that the police  
23 department for Baltimore City makes must relate to  
24 constitutional policing. If it's not constitutional, that  
25 obviously presents a problem. So those conversations were had

1 in December of 2019.

2 THE COURT: Just if I can, Ms. Moore, just for the  
3 record, again, for public dissemination here. The consent  
4 decree which you make reference is in United States versus  
5 Police Department of Baltimore City, civil number JKB-17-0099.  
6 As reflected in paper No. 2 in that file, as modified in paper  
7 No. 39. So that is the consent decree to which you're making  
8 reference.

9 MS. MOORE: Yes, Your Honor. (Audio interference)  
10 And I believe that the consent decree went into effect, I want  
11 to say in 2016, 2017 at the very latest. And we are still  
12 under consent decree. We meet regularly with Chief Judge  
13 Bredar, the Court monitors are regularly in communication.

14 THE COURT: Just for the record, again, just so the  
15 record is clear for the public, that does not mean that the  
16 Court in that case under the consent decree has ratified this  
17 question. This question is separately before me. And it does  
18 not mean, and you're not suggesting that Chief Judge Bredar  
19 has signed off on this program; correct?

20 MS. MOORE: You are so right.

21 THE COURT: Correct, from the point of view of the  
22 plaintiffs on this, from the ACLU point of view? There's no  
23 confusion on that. Clearly, the consent decree does not mean  
24 that the Court has ratified this program; correct?

25 MR. KAUFMAN: Absolutely not. In fact, DOJ said

1 explicitly it was not approving or disapproving of the program  
2 and it has never been submitted to the Court.

3 THE COURT: That's fine. Go ahead, Ms. Moore. I'm  
4 just being careful so the public understands that we're all in  
5 agreement as to the existence of the Consent Decree and also  
6 the legal effect or lack thereof as to the question before me  
7 now.

8 MS. MOORE: Correct. And to be very, very clear,  
9 that role confers no legal effect on the efficacy and the  
10 constitutionality of this program. Zero effect. But I raise  
11 that simply to let the public know, and everyone who's  
12 listening that we are still under consent decree and we still  
13 operate under a constitutional policing framework.

14 I also want Your Honor to know that, in terms of  
15 evaluating the efficacy and the propriety of this program, the  
16 police department has, within the contract, agreed to have  
17 independent evaluators through Morgan State University and I  
18 believe New York University, but I'm not exactly certain of  
19 that. We have handed over the evaluation of this program to  
20 others. It is not going to be the police department of  
21 Baltimore City assessing whether this program is efficacious  
22 and how it's operating. We have built in protection to make  
23 sure that the stated uses and purposes are stuck to and that  
24 there's no strain.

25 When we decided to pursue this program it was

1 announced publicly. There were public meetings. There were  
2 meetings on Facebook live, which I understand to date, just as  
3 of yesterday, there were 30,000 views of the education tool.  
4 It still remains on the city's public television station,  
5 which is Charm TV 25. If anybody's listening now you can go  
6 right there right now and see for yourself what this program  
7 is about.

8           So let me talk about what it's about. The program  
9 is designed to evaluate -- it's a pilot program, first of all.  
10 And it's designed to evaluate the extent to which the AIR  
11 Program might assist the Baltimore Police Department in  
12 solving and closing some of the city's most violent crimes.  
13 And those are murders, shootings, armed robberies, and that  
14 includes carjackings. And it's important to note here that  
15 these crimes have not abated or subsided even while this city  
16 is under stay at home orders by both the governor and the  
17 mayor of Baltimore City. Murders actually are higher today  
18 than they were this time last year. So, clearly there is a  
19 public need for something to respond to crime.

20           The AIR Program is designed to take sequential  
21 aerial photographs at a resolution of roughly one pixel per  
22 person. And at that resolution it's not possible to discern  
23 personal characteristics from the photo. Again, the program  
24 is limited to 12 hours of continuous data collection during  
25 daylight hours. And only when the weather permits it.

1           In order to actually use the data, there must be a  
2     qualifying crime, one of the four that I just mentioned. And  
3     only then would PSS review the data, analyze it, and provide a  
4     report to the Baltimore City Police Department. They would  
5     have to use conventional, ground-based imaging resources such  
6     as city watch and license plate readers in order for this data  
7     to even be usable. And, again, we just hope that it helps the  
8     police department solve and close crimes. More details are in  
9     some of our papers and you can get details from the actual  
10    contract, which is exhibit -- part of the plaintiff's  
11    submission.

12           I'm going to tell Your Honor what this program will  
13    not do. And this is what takes this out of the *Carpenter*  
14    analysis. The program will not provide real time surveillance  
15    or track CSLI and try not to use acronyms, but that's Cell  
16    Site Location Information. That will not be collected, cell  
17    phone data will not be collected through this program. The  
18    AIR Program's data will not determine who a specific  
19    individual is or what a particular car is. It will not  
20    randomly review collected images. In other words, the person,  
21    the professionals that will be working this program will not  
22    just randomly view collected images. And they will not be  
23    able to target any of these three plaintiffs through that  
24    review. That's really important to note.

25           It will only work when there's an egregious violent

1 crime that is already known to have occurred. It is not  
2 predictive. The AIR Program will not determine if a dot  
3 representing a person or car entering a building or structure  
4 is the same person or car that exits that structure. That's  
5 one of the limits. That's a result of collecting data only 12  
6 hours a day, not 24 hours a day, seven days a week. So it will  
7 not be able to stitch imagery together to tell a story of what  
8 this person did every single day for 45 days. It does not  
9 have that capacity. And, of course, there's no audio. So  
10 there will not be, you know, reaching in to hear  
11 conversations.

12 We talked about *Carpenter* and I think that we feel  
13 that the *Carpenter* case is one that, obviously, the plaintiffs  
14 rely on. This is a case they have to advance to the Court.  
15 But this is not a *Carpenter* case for a number of reasons. And  
16 let me enumerate just a few. Obviously, in *Carpenter* there  
17 was concern that the government had collected at least seven  
18 days, continuous days of cell site location information. And  
19 that's because they collected cell phone data, and as we all  
20 know, particularly today, we're all on our -- most of us are  
21 on our cell phones having this conversation, conducting this  
22 hearing. Our cell phones are with us pretty much 24/7. If  
23 you're like me -- not about me, but I keep both of my cell  
24 phones very close to me at all times because there's a need.  
25 And most Americans do the same. Our phones are almost an

1     appendage, an extension of one of our limbs. That is not the  
2     situation that we find with the data that will be collected  
3     through the AIR Program. It is so limited. It is not broad.  
4     And it's not intrusive and expansive in scope.

5             The AIR Program -- in *Carpenter* there was the  
6     Court specifically limited the -- its ruling to cell phone  
7     data, CSLI, and that is just not what we have here. In fact,  
8     the technology that's contemplated by the AIR Program really  
9     wasn't even available at the time that the *Carpenter* -- not  
10    involved and the *Carpenter* decision was made. The Supreme  
11    Court in *Carpenter* held that a person maintains a legitimate  
12    expectation of privacy and the record of their physical  
13    movements as captured by CSLI. And, of course, the AIR  
14    Program will not use CSLI, nor will it create a record of an  
15    individual's physical movement as those movements were  
16    contemplated by the *Carpenter* case. The *Carpenter* court found  
17    it significant that mapping a cell phone's location over the  
18    course of 127 days provided an all encompassing record of the  
19    defendant's whereabouts. That is not our situation here. The  
20    AIR Program will not capture cell phone data, nor will it  
21    provide an all encompassing record of anyone's whereabouts.  
22    It's simply does not work that way.

23            One of the compelling arguments in the *Carpenter*  
24    case was that by collecting all of the data that was collected  
25    regarding Mr. Carpenter, the government was able to really

1 stitch together a book of Mr. Carpenter's life over the course  
2 of 127 days. And that's what really pulled the story of the  
3 intimacies of Mr. *Carpenter's* life. And that is what, in  
4 part, the Court found so offensive and so concerning. But  
5 that's not our case here. That is not the situation here, the  
6 AIR Program will only capture data, movement that are in the  
7 public. And, again, it's limited to 12 hours a day. So it's  
8 not an intrusive look into anyone's life. It will only  
9 capture what is in the public and what these plaintiffs really  
10 have no reasonable expectation of privacy in those movements.  
11 The program does not -- it's not designed to capture the  
12 intimacies of their lives and it will not capture the  
13 intimacies of their lives. And that was the situation in  
14 *Carpenter*.

15 THE COURT: As I understand it -- if I can just ask  
16 a follow-up question, as I understand it, the imagery as  
17 summarized in the Professional Services Agreement contract,  
18 which is attached to the complaint from PSS, as I understand  
19 it, the imagery is so limited, I think the phrase is one  
20 pixel, p-i-x-e-l, per person, meaning that an individual  
21 appears as a dot, that the individual characteristics are not  
22 observable, your representation is that they are never  
23 observable?

24 MS. MOORE: Correct.

25 THE COURT: Under no circumstances could the



1 individual characteristics be observable, even upon further  
2 review, later review, that they still could not identify a  
3 particular, specific person; is that correct?

4 MS. MOORE: That is correct, Your Honor. And that  
5 is why the utility of the AIR Program is so reliant on  
6 ground-based surveillance systems that are already in  
7 existence in Baltimore. In a nutshell, for you and the public  
8 that are listening, the AIR Program works by identifying a dot  
9 that is -- has gone to or was present at or has left the scene  
10 of we'll just say a murder. That dot would be tracked, where  
11 did it start. The dot was present at the time of the murder  
12 and then it left the scene. The utility of tracking that dot  
13 is not realized or appreciated until such time as the  
14 consultant is able to match that dot to data that is  
15 collected, or has been collected by the ground video  
16 surveillance cameras that are located throughout Baltimore,  
17 and license plate readers.

18 The program is unique. It's expansive. We like  
19 to -- we hope that it's effective, but it does have  
20 limitations. It only works with existing surveillance tools.  
21 And good policing, good detective work, that's able to match  
22 up. And this is my next point why this situation, the AIR  
23 Program is not the same as that of cell phone data collected  
24 in *Carpenter*. It's complicated, it's not easily -- you can't  
25 just simply download the data and say, oh, there, we've got

1 our person. We know, you know, who this is, what this is,  
2 where they came from and where they went. You've got to spend  
3 time reviewing the data. It takes two hours to find one hour  
4 of data. You've got to match it to data collected from other  
5 sources. It's complicated. The program does not have some of  
6 the -- it's been referred to as a eye in the sky, but it's not  
7 really that. It's a camera in the sky. But it doesn't have  
8 infrared, telephoto, zoom, or other technologies that one  
9 might think would be really effective to make this more  
10 valuable. Any over -- pardon me.

11 MS. WALDEN: This is Lisa, do you mind if I add in  
12 just a couple of points?

13 THE COURT: Go right ahead, Ms. Walden. Go ahead.

14 MS. WALDEN: I think it would be helpful for the  
15 Court, and to anyone who hasn't seen these photos, to help  
16 appreciate the type of data that the aerial cameras are  
17 collecting, to take a review of document 3-1 in the docket.  
18 And at page, I think, it's 9 of 17 you can see from the actual  
19 images captured by the camera. And as you'll see there,  
20 they're very grainy, they're very distant. And I think it  
21 sort of reinforces the point the Solicitor was making that  
22 there's no personal identifiable information in these photos.  
23 You can't tell a man from a woman. In fact, you might not be  
24 able to tell a person from a small vehicle.

25 So that is the raw data at issue here. And further,

1 to what the solicitor was commenting on, that sort of gives a  
2 better holistic understanding of the way the program is to  
3 operate, and also further distinguishes it from *Carpenter*,  
4 because of the quality of these photos, in order to -- the  
5 photos themselves are really useful for very little. In order  
6 to reduce them to useful, actionable information that could  
7 assist in the investigation of a murder, shooting, armed  
8 robbery, or carjacking, the contractor has to apply -- it's  
9 one hour of analyst time to track one of these dots for two  
10 hours of real time movement.

11 So it's enormously laborious and it requires the use  
12 of very sophisticated algorithms to convert this grainy  
13 photograph into something resembling a track, which itself  
14 still does not identify the subject, as the solicitor was  
15 saying. You do still have to -- to reduce the dots to an  
16 identity, you would have to find some sort of a conventional,  
17 ground-based resource to identify who the person in the  
18 picture -- what the car in the picture -- so I think those  
19 points are fairly relevant to the general understanding of how  
20 the system operates and also to why this really is not a  
21 *Carpenter*-type of situation. There is simply not the  
22 bandwidth to track every person in the city in the manner that  
23 the plaintiffs presuppose will occur. It's not possible as a  
24 practical matter. And the underlying raw data itself is no  
25 encyclopedic record of really much of anything. And I think

1 that's an important sort of clarification point. I apologize  
2 if I interrupted.

3 THE COURT: No, that's quite all right. Thank you  
4 very much, Ms. Walden. Thank you.

5 MS. MOORE: So, at base the plaintiffs argue that  
6 the AIR data collection program is a time machine. It simply  
7 is not. It's not a search. It's not a search that -- there's  
8 no requirement for a warrant. We believe that the Supreme  
9 Court and the 4th Circuit have already held constitutional far  
10 more intrusive aerial surveillance than what is contemplated  
11 by this program. And here we would refer Your Honor to  
12 *California versus Ciraolo* and *Dow Chemical versus United*  
13 *States*. And with that I'll rest on the -- unless you think I  
14 should add something on the first *Winter* factor.

15 THE COURT: No, before I hear further from Mr.  
16 Kaufman, I would just note that with respect to the two cases  
17 that you have mentioned, Ms. Moore, *California versus Ciraolo*,  
18 a 1986 Supreme Court opinion, which involved a helicopter a  
19 thousand feet over the defendant's enclosed backyard. And  
20 there were observations of marijuana with the naked eye and it  
21 was deemed not to be a search. Essentially, similar to  
22 *Florida versus Riley*, a 1989 Supreme Court opinion. Once  
23 again a helicopter above a defendant's home or private areas  
24 observing marijuana with the naked eye was deemed not to be a  
25 search. Essentially, in those two cases, as well as in *Dow*

1     *Chemical versus United States* in 1986, with respect to a  
2     standard floor-mounted aerial mapping camera, taking  
3     photographs of a commercial facility of 12,000, 3,000 feet,  
4     essentially the Supreme Court held in those cases that it was  
5     not a search.

6             Obviously, the position of the plaintiffs here is  
7     that the world is changing now in light of the Supreme Court's  
8     opinion in *United States versus Jones* in 2012, and the Supreme  
9     Court's opinion in *United States versus Carpenter* in 2018  
10    dealing with cell site location information. Again, the legal  
11    jargon for which is CSLI.

12            So with that let me hear further from you, Mr.  
13    Kaufman. I'll be glad to hear any response you make on this  
14    and then I may have some follow-up questions of you as well.

15            MR. KAUFMAN: Okay. Thank you, Your Honor. Just a  
16    few points in response to that. No. 1, the purpose of this  
17    program is to identify people. That is the purpose of the  
18    program. And it's worth asking, after listening to defense  
19    counsel explain how blurry the photos are, and how meaningless  
20    the information is, why the defendants are going through with  
21    this program at all if that is actually the case. And the  
22    answers are both obvious and on the pages of the contract.  
23    They intend to use this information to identify people,  
24    because that is what the data is capable of doing. And that  
25    is what's going to happen.

1 Ms. Moore also says this is not a *Carpenter* case,  
2 and while in some respect that may be true, the differences  
3 make it an easier case not a harder one. The BPD says that  
4 the collection is not continuous. I already addressed that,  
5 but the collection by cell phone is just as -- it's even more  
6 choppy than the 12 hours of data that the government would be  
7 getting in one gulp under this program. And then, of course,  
8 they will be adding that together day after day for 45 days.  
9 To say that that is a meaningful difference between this case  
10 and *Carpenter* is just not correct.

11 THE COURT: Mr. Kaufman, if I can just interrupt you  
12 for one second.

13 MR. KAUFMAN: Sure.

14 THE COURT: I want to stay with you on this point.  
15 The Police Department has indicated in terms of the  
16 limitations of this system in identifying dots that really  
17 can't identify people. I just need for you to explain to  
18 me -- obviously, we're not trying the entire case here today,  
19 we're dealing with the matter of whether or not there is  
20 likelihood of success on the merit to the extent that you get  
21 a preliminary injunction immediately -- but with respect to  
22 the abilities of this system the -- there's more Ms. Walden  
23 had proffered that it may locate a dot that's at the scene of  
24 a -- of an area of a known murder, and it may try to identify  
25 a dot, be it a car or a person that may or may not go to

1 another area of the city.

2 That would -- obviously, the city, the police  
3 department is trying to solve crimes and locate people who  
4 have committed crimes. But the matter of just following a  
5 dot, obviously, has to lead to further, on-the-ground  
6 investigation. So I don't know that it's fair to say that, of  
7 course, they're trying to identify people. Of course they're  
8 trying to identify those who've committed crimes. But I don't  
9 know that that means that identifying where a dot moves means  
10 they're identifying people per se, just as to the surveillance  
11 itself. But I want to give you an opportunity to respond to  
12 my concern in that regard.

13 MR. KAUFMAN: Thank you. Thanks, Your Honor, and I  
14 appreciate that opportunity. I guess there's a few possible  
15 responses to that. First, just as a factual matter, we're  
16 talking about the collection of this information, PSS is a  
17 state actor, the government conceded that today. So for all  
18 intents and purposes we're talking about a collection of data  
19 that is in the government's hands. And that data is capable  
20 of identifying individuals. Now, whether -- and I appreciate  
21 the BPD wants to focus on what its current officers will be  
22 doing with the data. But that's not the focus of the Fourth  
23 Amendment claim. The claim is about collection of this data  
24 in the first instance by this the government, which is exactly  
25 what defense counsel conceded is happening here. And so that

1 is the proper focus of the pooled data.

2 Now as to how this stuff is identifying, again,  
3 the -- you can roll the tape backwards and forward to a  
4 specific place. If somebody's a homeowner, that's obviously  
5 identifying. We pointed to a study that shows that even some  
6 of these anonymous dots living around the city can be used to  
7 derive their identity fairly easily. And they've -- it's  
8 simply not relevant that the BPD hasn't put into its contract  
9 that that's what it's going to do. The point is the data will  
10 be collected and that data will be in its state revealing of  
11 that information.

12 And then the last piece, of course, is that -- and  
13 this is something, you know, candidly, it's acknowledged by  
14 the defense, it's acknowledged in the contract, it's pled in  
15 our complaint, but CCTV and the LPR systems will be used and  
16 integrated with the AIR Program. So it's simply wrong to say  
17 that this is a separate thing. They have tied its together by  
18 themselves and made that an explicit part of what they're  
19 doing here.

20 Another point, just following from *Carpenter*, is  
21 that it did not, as I said before, it was not so automatically  
22 identifying in *Carpenter*, just to review what the government  
23 had to do to make useful meaningful sense of CSLI, they had to  
24 flip defendants to turn state witnesses to corroborate  
25 defendant's presence in a large cell sector, that he was



1 actually participating in a crime at a particular crime scene.  
2 They had to obtain their own CCTV footage near the crime scene  
3 showing that the individual was nearby. The FBI agent combed  
4 through 13,000 location points to identify 16 points that  
5 placed him near the crime. All of that is exactly, if not --  
6 it is exactly what the government tries to say insulates the  
7 collection of information from a Fourth Amendment search here.  
8 And that just simply cannot hold up even under the terms of  
9 *Carpenter* itself.

10 I've also -- I explained before, but I think worth  
11 pointing out again because the government insists on it, the  
12 idea that the data in *Carpenter* is continuous and the data  
13 here is not is just simply not true as a factual matter. As  
14 we pointed out, there is not a second-by-second catalog of  
15 cell phone ping information that your carrier has. That is  
16 not how it works. But here there will be a second-by-second  
17 track of an individual person as they move around the city.  
18 The purveyor of the system, Mr. McNutt has also described the  
19 system as Google Earth with TiVo, and that's what it is, it's  
20 a second-by-second ability to track location over time.  
21 That's what it is.

22 Again, in *Carpenter* the data at issue was about  
23 large sectors of, you know, wedge-shaped sectors that  
24 surrounded a cell phone tower. It was not a yard-by-yard ping  
25 as to a person's location. So the underlying data is even

1 more sensitive than the data that might just put you in a  
2 neighborhood or on a particular block. Here you know the  
3 stoop a person is sitting on because of these cameras.

4 One final point in response and then I'm, again,  
5 happy to answer anything else you would like, about the  
6 policies. And the -- the Department likes to -- wants to talk  
7 about the policies, but as we explained, they have not argued  
8 that a special needs analysis applies here. And that is the  
9 only way that you escape the warrant requirement as we pointed  
10 out in our briefs. And absent special needs, a warrant is  
11 required. And the bottom line is the Department has not  
12 sought a warrant to bless this program, as we point out in our  
13 first brief. It could not get a warrant to bless this program  
14 because it would effectuate a general search, the most reviled  
15 kind of search under the Fourth Amendment and, in fact, the  
16 reason that the Fourth Amendment was passed. And it does not  
17 intend to get a warrant at any point.

18 And so the protocols and policies are interesting.  
19 We certainly would applaud anything that the department has  
20 done to try to protect privacy through this program. But the  
21 fact of the matter is the program is designed to collect  
22 identifying location information about the plaintiffs and  
23 about 600,000 people in Baltimore. And that is not  
24 constitutional under the Fourth Amendment.

25 THE COURT: All right. Thank you, Mr. Kaufman. Let

1 me just ask you a few follow-up questions just, again, for  
2 purposes of the public understanding where we are here.  
3 Essentially, I had mentioned the Supreme Court cases in the  
4 1980s, *Florida versus Riley*, *California versus Ciraolo*, and  
5 *Dow Chemical versus United States*, all of which essentially at  
6 that time established that individuals do not have a  
7 reasonable expectation of privacy on things which are  
8 observable from flights in navigable airspace. That was the  
9 state of the law as of the late 1908s; correct?

10 MR. KAUFMAN: Yes. Those cases were decided within  
11 a few years from each other. And, I mean, it's worth just  
12 talking for a moment about what those cases involved. They  
13 involved police, without a warrant, targeting an individual  
14 that they were investigating, using their police resources, a  
15 helicopter in one case, planes in another, flying at lawful  
16 altitude and flying over properties one time. And that is  
17 what they did. And, I don't think it takes a lot of  
18 imagination, you don't have to go 40 years into the future and  
19 read *Carpenter* to think about how those courts might have  
20 analyzed the situation differently if for 80 hours a week --

21 THE COURT: I understand. No, I understand your  
22 point on that. I'm just trying to assure for purpose of  
23 public dissemination we understand where we are here in 2020  
24 on this question. Because with respect to these short-term,  
25 limited aerial surveillance, which were clearly just focused

1 on individuals, the United States Court of Appeals from the  
2 4th Circuit, following that case law, clearly in cases which  
3 you all have cited on both sides, I believe, *Giancola versus*  
4 *State of West Virginia Department of Public Safety*, in which  
5 the 4th Circuit relied upon the Supreme Court jurisprudence I  
6 just mentioned, finding that a helicopter surveillance over  
7 personal property was reasonable under the Fourth Amendment,  
8 because it comported with Federal Aviation Administration  
9 regulations.

10 And then there was a 4th Circuit opinion in 2002,  
11 *United States versus Breza*, B-r-e-z-a, which upheld aerial  
12 observation of landscaped area involving a defendant's house,  
13 again, relying upon those trilogy of cases in the late 1980s.  
14 And then what you had is in 2012 the *Jones* case that dealt  
15 with the GPS system on a vehicle and the issue of expectation  
16 of privacy going back to the *Katz* case on expectation of  
17 privacy, which we've already discussed is the real analysis  
18 here.

19 And then we get up to *Carpenter*, the case in which  
20 you were involved, and two of your colleagues, in 2018,  
21 involving cell site location information, very much focused  
22 individually. Essentially, the issue becomes the ambit of  
23 *Carpenter* and I must -- I'm sure you've recognized, must  
24 address the language of Chief Justice Roberts in his opinion,  
25 because he specifically said -- and it was a five to four

1 opinion -- and in his opinion he noted specifically at 138  
2 Supreme Court Reporter 2220, twenty two, twenty, it's 86  
3 United States Westlaw 449, I believe, Our decision today is a  
4 narrow one. We do not express a view on matters not before  
5 us, colon, real time CSLI -- meaning cell sight location  
6 information or tower dumps. And then he goes on, We do not  
7 disturb the application of the *Smith* and *Miller* cases and  
8 prior opinions of the Supreme Court. And specifically Chief  
9 Judge Roberts said at that time, as you're well aware Mr.  
10 Kaufman, quote, Will call into question conventional  
11 surveillance techniques and tools such as security cameras,  
12 with respect to the limitation of that opinion. And the --  
13 essentially then Chief Justice Roberts found that the  
14 acquisition of the cell site location information in *Carpenter*  
15 was in fact a search.

16 Which I think leads us into a question that I need  
17 to ask of you, do you have reference in footnote, I believe in  
18 a footnote in your initial memorandum, you have referenced to  
19 one opinion which followed the *Carpenter* case in the United  
20 States District Court for the District of Massachusetts,  
21 *United States versus Moore-Bush*, 381 F.Supp.3d 139, a 2019  
22 opinion of that court, which is now on appeal to the United  
23 States Court of Appeals for the 1st Circuit. Are you counsel  
24 in that case as well?

25 MR. KAUFMAN: I'm counsel of amicus party in that

1 case.

2 THE COURT: All right. And the -- there the  
3 question becomes a matter of a pole camera. And I guess what  
4 I want to give you an opportunity to respond to is that the  
5 jurisprudence here, the view this court and certainly the 4th  
6 Circuit has been that the constitutionality of pole cameras  
7 had been upheld. And, essentially, these pole cameras  
8 operate -- in many instances they operate 24/7, they operate  
9 24 hours a day, 7 days a week. And they record everything  
10 that happens on a particular street.

11 And the -- apparently in the *United States versus*  
12 *Moore-Bush* case, last year before the United States District  
13 Court for the District of Massachusetts, that court held that  
14 a pole camera was a search, running afoul of the Fourth  
15 Amendment. And also holding that, therefore, the use of that  
16 surveillance camera risked chilling First Amendment rights.  
17 The arguments you make here with respect to the surveillance  
18 program, the AIR Program of the Persistent Surveillance  
19 Systems, I gather would apply to pole cameras as well, would  
20 they not?

21 MR. KAUFMAN: Well, I don't think that this is  
22 exactly the same case at all as the pole camera case. Though,  
23 it's absolutely correct, and the *Moore-Bush* decision does a  
24 good job of this in the District Court, explaining why  
25 *Carpenter* leads the Court to that result, which as amicus we

1 do agree with that result.

2 What happened in *Moore-Bush* is I think eight months  
3 of continuous surveillance of an individual using, you know,  
4 when pole cameras started becoming, you know, part of ordinary  
5 law enforcement measures, they were rudimentary security  
6 cameras just put on a pole. And they would have to go change  
7 the tape every once in a while. And that's why they put it on  
8 utility poles so it looked like a normal activity and not tip  
9 anyone off. But the cameras at issue in *Moore-Bush* are eight  
10 months, they are controlled from a centralized location in the  
11 police department, they can be viewed, they can be  
12 manipulated, they can be zoomed, they can be panned, they can  
13 be tilted, they can zoom in through windows, they can look at  
14 license plates.

15 So I think what the Court in *Moore-Bush* is doing,  
16 and something this Court does not need to do in this case, is  
17 sort of take a look at what *Carpenter* means in a new situation  
18 with a new technology. But here we're not talking about  
19 challenging traditional surveillance methods in the case at  
20 all. In fact, my colleagues on the other side acknowledge  
21 this is unique and unprecedented. And so our argument does  
22 not require reading or overruling *Ciraolo*, or saying you know,  
23 flights like that that are ordinary parts of police practice  
24 for the last 30 years are not okay. In fact, our argument  
25 depends on *Ciraolo* to show that the Court was concerned about

1 concerns that went far beyond the limited surveillance in  
2 those kind of scenarios. And while CCTV and ALPR are relevant  
3 to the identification abilities of this system, they're  
4 written into the contract as we discussed, we're not  
5 challenging the use of sporadically located cameras. I'm not  
6 aware of any ALPR CCTV system that's as comprehensive as the  
7 AIR Program.

8 And so I acknowledge Chief Justice Roberts, and  
9 proper respect for the fact that he could only decide the case  
10 in front of him, along with the other members of the Court.  
11 And that's how all Courts should proceed, of course. But the  
12 fact that the *Carpenter* case didn't reach every other scenario  
13 doesn't mean that its logic doesn't compel a certain result in  
14 that case.

15 THE COURT: All right. Well, thank you very much,  
16 Mr. Kaufman on that. The -- with respect to the matter of  
17 likelihood, what we're in, so the public is aware, we're in  
18 the first step of a four-step analysis, the main step here in  
19 terms of likelihood of success on the merits, and whether or  
20 not the AIR Program surveillance is a search within the  
21 meaning of the Fourth Amendment and whether or not it is  
22 unreasonable under the Fourth Amendment. With respect to  
23 likelihood of success on the merits as to the First Amendment  
24 claim, Count 2, essentially as I understand it the defendant  
25 did not really address the merits on that, only that they



1 challenge standing. And the position of the plaintiffs is  
2 that any such monitoring will have a chilling effect on the  
3 rights of association of the plaintiffs.

4 Want to -- anything to add to that from the point of  
5 view of the plaintiffs, Mr. Kaufman, and then I'll hear from  
6 Ms. Moore and from Ms. Walden on the Fourth Amendment issue.

7 MS. MOORE: Your Honor, this is a Dana Moore. I was  
8 just wondering if I could respond very, very briefly to some  
9 of the comments that were just made --

10 THE COURT: Sure. Go ahead.

11 MS. MOORE: Thank you. With respect to the AIR  
12 Program, I just want to point out, and it's probably very  
13 clear, but I just want to be abundantly clear, the AIR  
14 Surveillance Program that we contemplate falls squarely within  
15 the air surveillance techniques that have already been found  
16 constitutional by the Supreme Court and the 4th Circuit. It's  
17 just that we're using that data that collected, we're using it  
18 differently. The collection system itself, it's exactly what  
19 has been done and been approved in other courts. Important to  
20 note that the *Carpenter* case is fairly limited. They actually  
21 cabined that decision strictly to CSLI.

22 Counsel -- addressing the state actor argument, I  
23 want to back off that a little bit, and here's why: Although,  
24 there was a contract that governs how this program will be  
25 operated, it's very important to note that this -- the police

1 department will get a very, very, very limited portion of the  
2 data that's collected. And will only get that data after it's  
3 been analyzed and found to be related to a particular crime.  
4 So the vast majority of the data that's collected, we'll never  
5 see. We'll never see because it's not relevant.

6 Counsel also said that the purpose of this program  
7 is to follow people to identify people. And that's not the  
8 case, it's to follow movement. They're asking why are we  
9 using this if it's not so clear. Because we are determined to  
10 find and use any tool that looks like it is possible to aid  
11 the police department in solving and clearing crime, so long  
12 as those tools are constitutional, which this tool is.

13 Counsel stated that the purpose of this program is  
14 to follow these plaintiffs. And that is a very dangerous  
15 comment to make. And I want it to be very, very clear, that  
16 is patently untrue. And it's incredibly irresponsible to  
17 state that that is the purpose of this program. It is not to  
18 follow these plaintiffs. These plaintiffs -- that is not the  
19 intention. If they were to show up at all it would be  
20 incidental and we would never even know, because it wouldn't  
21 relate to any of the stated crimes. Thank you.

22 THE COURT: All right. Well, just in that regard,  
23 without getting too deep in the weeds on that, that contention  
24 by plaintiffs is a matter that may have to be further reviewed  
25 in terms of discovery if that's the contention. And the

1 Police Department can certainly establish during discovery  
2 that that representation by plaintiff's counsel may not be  
3 correct. But that's a matter -- we're not going to be able to  
4 resolve that here today in terms of that contention. I hear  
5 what you're saying in terms of the contention of plaintiff's  
6 counsel in that regard.

7 MR. KAUFMAN: Your Honor, the --

8 THE COURT: Yes.

9 MR. KAUFMAN: Just to point out, I did not -- and I  
10 think the transcript will show -- I did not say the purpose of  
11 this program is to follow the plaintiffs. I just needed to  
12 point that out. That is not what I said.

13 THE COURT: I understand.

14 MR. KAUFMAN: Thank you, Your Honor.

15 THE COURT: I understand. There's nothing improper  
16 about what you've argued. That's fine. I'm just saying that  
17 as to that, in terms of your contention as to what the program  
18 can or cannot do, and the Police Department's response, no, it  
19 cannot track as definitively as you say, that's a matter that  
20 may have to be explored during discovery. I would just note  
21 that I think it's pretty clear that if a private entity  
22 exercises powers that were traditionally the prerogative of  
23 the state it is carrying out state action for purposes of  
24 Section 1983. There's a 4th Circuit case in 1994, *Conner*  
25 *versus Donnelly* that clearly establishes that.

1           So let me just go, if I can, to the First Amendment  
2 claim in terms of likelihood of success on the merits. If  
3 there's anything further that you all want to add for me as to  
4 the First Amendment issue in terms of, again, the likelihood  
5 of success on the merits the first of the four and the main of  
6 the four factors we're addressing here today, Mr. Kaufman.

7           MS. GORSKI: Your Honor, this is Ms. Gorski.

8           THE COURT: Ms. Gorski, that's fine. Be glad to  
9 hear from you.

10          MS. GORSKI: Great. Thank you so much. So on the  
11 First Amendment claim, again, I just want to emphasize the  
12 defendants have not disputed the merits of plaintiffs' First  
13 Amendment claim, they've only disputed plaintiff's First  
14 Amendment standing. The AIR Program on the merits  
15 substantially impairs plaintiffs' First Amendment freedom of  
16 association. And that's not just through some kind of  
17 abstract chilling effect. It concretely burdens and effects  
18 their work in the ways set forth in the plaintiffs'  
19 declaration.

20          The BPD is collecting a comprehensive map of the  
21 ties embedded in plaintiffs' everyday lives in their  
22 community-based work. And that collection itself, for  
23 standing purposes, confers a First Amendment injury. And that  
24 First Amendment injury is a substantial one. Which means that  
25 the government's program has to survive exacting scrutiny,

1 that is constitutional only if it is the least restrictive  
2 means of achieving a compelling state interest. And the AIR  
3 Program fails that test for the reasons that my colleague Mr.  
4 Kaufman has explained concerning the scope and the breadth of  
5 that program. Thank you.

6 THE COURT: All right. I would just note that it  
7 seems to me that the matter of whether or not there's a search  
8 and the matter of whether or not that -- there's a violation  
9 of Fourth Amendment necessarily effects the analysis with  
10 respect to a chilling effect as to First Amendment rights. I  
11 think both sides have mentioned the *Clapper versus Amnesty*,  
12 the 2013 opinion of the United States Supreme Court, which I  
13 think has specifically noted that surveillance itself does not  
14 give rise to an injury in fact, creating Article III standing.  
15 But I think it's been adequately briefed and I can review the  
16 papers in ruling on this, when I make sure to file the opinion  
17 by this Friday.

18 So in lining this out here --

19 MS. GORSKI: Your Honor, I'm sorry, if I may. One  
20 very quick point on *Amnesty*. *Amnesty* did not hold that  
21 surveillance itself cannot constitute an injury in fact. And  
22 in fact it was the *Wikimedia* case, a separate case, the other  
23 courts were very clear, including the 4th Circuit, that the  
24 collection of private information is itself an injury in fact.  
25 In *Amnesty* the issue was that the surveillance was entirely

1 speculative. Plaintiffs, according to the Court, would be  
2 speculating about the facts that they would be subject to the  
3 surveillance. Here, in contrast, plaintiffs are not  
4 speculating. Defendants do not dispute that plaintiff's  
5 information will be collected by the AIR Program. Thank  
6 you.

7 THE COURT: All right. Thank you very much  
8 Ms. Gorski.

9 And so with that let me just go to the issue of  
10 irreparable harm. Again, the law is very clear, so that the  
11 public understands that for this Court to issue injunctive  
12 relief as requested by the plaintiffs, the four factors that  
13 must be satisfied are; one, the likelihood to succeed on the  
14 merits, which is what we've been spending the last hour upon,  
15 as to whether or not this program constitutes a search under  
16 the Fourth Amendment. Secondly, whether the movant is  
17 likely to suffer irreparable harm absent preliminary relief.  
18 Third, the balance of equities in favor of the movant. And,  
19 finally, that an injunction is in the public interest.

20 So in lining it up here, I don't want to ignore the  
21 second, third, and fourth requirements. The plaintiffs  
22 essentially argue that the irreparable harm is in the context  
23 of a constitutional violation. The defense's response is that  
24 there is no constitutional violation. I don't know that we  
25 need to spend a lot of time on the irreparable harm issue. It

1 is totally dependant upon this Court's determination of  
2 likelihood of success on the merits as to the issue of whether  
3 or not this is a search.

4 Is there anything either side wants to add on the  
5 irreparable harm analysis before we get to the balance of  
6 equities and the public interest, Mr. Kaufman or Ms. Gorski?

7 MS. GORSKI: Your Honor, the only thing I would add  
8 is that in our view the First Amendment analyses and the  
9 Fourth Amendment analyses are distinct. And so even if this  
10 Court concludes that the initial collection of information  
11 through the AIR Program does not constitute a Fourth Amendment  
12 search, it has to separately undertake a First Amendment  
13 analysis. And that analysis also has to take into account  
14 plaintiff's allegations with respect to the substantial  
15 likelihood that they'll be subject to individualized  
16 reporting. And the First Amendment burden must be considered  
17 separately as the irreparable harm analysis. Thank you.

18 THE COURT: All right. Ms. Moore or Ms. Walden,  
19 anything else you want to add on this.

20 MS. MOORE: No, we don't want to belabor the point.  
21 And we know that Your Honor has read our papers and will  
22 review them. We'll go with --

23 THE COURT: All right. Bottom line, again, so the  
24 public understands, all four criteria have to be satisfied.  
25 If you don't satisfy all four criteria, then the issue of the

1 matter of entering injunctive relief is within the equitable  
2 discretion of this Court. And, as I said earlier, it's a  
3 heavy burden that lays upon the plaintiff in seeking  
4 injunctive relief.

5 So the third of the four factors to consider is the  
6 balance of the equities. Essentially, the plaintiffs have  
7 argued that in balancing the equities, government officials  
8 are not harmed by the issuance of a preliminary injunction,  
9 which prevents the state from implementing a likely  
10 unconstitutional practice. The defendants have responded that  
11 the program is being supported by a philanthropic enterprise.  
12 And that there is no guarantee that the funding will be  
13 available indefinitely. And that it would -- stopping this  
14 program now would, perhaps, deprive the city of Baltimore of  
15 those philanthropic efforts. I'm aware of the arguments of  
16 both sides on balancing the equities. Does anyone want to add  
17 anything further on that?

18 MS. MOORE: Your Honor, this is Dana Moore -- I  
19 apologize.

20 THE COURT: Go ahead. Ms. Moore, go ahead.

21 MS. MOORE: So it's not just the funding issue, it's  
22 the funding issue coupled with the reality that violent crime  
23 continues in Baltimore. The public has a very --

24 THE COURT: I think we're going to get -- I think  
25 that's more of a public interest analysis. I hear you. I'm



1 going to get there in a minute. I just want to go over the  
2 matter of balancing the equities here. We're going to get  
3 into that discussion on public interest in a moment, the  
4 fourth of the four criteria.

5 Anything else you want to add on the balance of the  
6 equities and I'll hear from Ms. Gorski next.

7 MS. GORSKI: Nothing more, Your Honor. Thank you.

8 THE COURT: All right. Let's get into what  
9 Ms. Moore was about to get into and that's the public interest  
10 here. According to the papers here, and as I understand in  
11 the pleadings here, that this is one thing I'm afraid is  
12 rather distressing here in this difficult time that we're  
13 facing in terms of the pandemic, and the very fact that we're  
14 having this two-hour conference remotely, from different sites  
15 on the telephone, because of steps taken in terms of only  
16 having this court be open for emergency proceedings,  
17 consistent with the executive orders of Governor Hogan of our  
18 state, that according to my review of the papers as of eight  
19 days ago, April the 13th, there were 81 homicides in the city  
20 of Baltimore, which is five more than on April 13th, 2019.  
21 And 2019 was among -- I think it was the second most violent  
22 year in the history of the city.

23 And if one thing can be clear it's that the pandemic  
24 and the stay-at-home orders, it does not appear to have had  
25 any effect at all on the level of violence here in the city of

1 Baltimore. And the Court cannot ignore the important factor  
2 here of public interest with respect to the unfortunate  
3 situation here in the city of Baltimore, where even a pandemic  
4 cannot slow the pace of the killings in this city in certain  
5 neighborhoods.

6 Now, the plaintiffs have essentially noted, as a  
7 matter of public interest, that upholding constitutional  
8 rights clearly serves a public interest, without question.  
9 Clearly, no matter what the program is, if it's violative of  
10 constitutional rights, one does not satisfy their  
11 constitutional rights in the public interest of the overall  
12 majority of the public. But the defendants have argued that  
13 the public interest favors the Aerial Investigation Review  
14 Program, given this level of violence. For the entire year of  
15 2019 there were 348 homicides in the city of Baltimore.

16 And I do not ignore the fact that that the United  
17 Baptist Ministry Convention, a leading religious organization  
18 here in this city, as well as the Greater Baltimore Committee,  
19 which is the -- essentially, the leading business advisory  
20 organization, both have been involved in this matter. They  
21 have both expressed their support for this program. And I  
22 certainly do not ignore the fact that consistent with the  
23 consent decree requirement, again, not getting the approval of  
24 this court in any way, but consistent with the consent decree  
25 that the Baltimore City Police Department has complied with

1 the consent decree in terms of providing notice of their  
2 intentions in this regard as well as public hearings.

3 Having said that, as I know the plaintiffs would  
4 likely note, having public hearings at this time is very  
5 difficult and clearly there could have perhaps been more  
6 public input if we weren't in the situation of essentially  
7 sheltering in place here during the pandemic. So the public  
8 interest is not something I'm going to lightly just ignore  
9 here. Clearly, the fundamental issue here before me is  
10 whether or not this constitutes a search, which would be  
11 violative of the Fourth Amendment.

12 But I'd be glad to hear from plaintiff's counsel on  
13 this and then I'll hear from defense counsel. I note that the  
14 plaintiff's counsel in its -- I mean, defense counsel in its  
15 submissions here on the public interest issue, essentially  
16 have contended that while the -- I think the exact language  
17 was while the plaintiffs purport to altruistically speak for  
18 all Baltimoreans, they do not represent the public citizenry  
19 at large. And the defense, the Police Department has noted  
20 the support of the United Baptist Ministry Convention,  
21 composed of some 100 churches, as well as the greater  
22 Baltimore Committee.

23 So, plaintiffs, I'll be glad to hear from you on  
24 this fourth of the four criteria in terms of the public  
25 interest, Mr. Kaufman or Ms. Gorski. And then I'll hear from

1 you Ms. Moore or Ms. Walden.

2 MS. GORSKI: Thank you, Your Honor. There are  
3 unquestionably many weighty considerations here. And  
4 plaintiffs acknowledge and underscore that reality. But as  
5 defendants have acknowledged, the injunctive relief analysis  
6 is not a popularity contest. And the public interest inquiry  
7 is not whether a raw majority of Baltimoreans favor wide-area  
8 surveillance or not. Ultimately, the BPD's objective here in  
9 reducing crime is commendable, but the public has, at bottom,  
10 an interest in vindicating its rights under the Fourth and  
11 First Amendments. And the BPD cannot pursue an  
12 unconstitutional policy in service of its commendable  
13 objective. Thank you.

14 THE COURT: All right. Thank you very much,  
15 Ms. Gorski.

16 And, Ms. Moore or Ms. Walden, I think Ms. Moore, you  
17 wanted to address this matter, go right ahead.

18 MS. MOORE: Sure, Your Honor. Your Honor laid out  
19 the factors neatly. Crime continues, violent crime continues  
20 in Baltimore. We would have expected it to go way down given  
21 the orders that we're all living under. And that has not  
22 happened. That has not happened. The community at large is  
23 crying out for solutions. They are expecting Commissioner  
24 Harrison and his police department and Mayor Young and his  
25 executive team to do something substantial to reduce crime.

1 We are getting that call at the time when we are seeing that  
2 it's very difficult to recruit police officers or new officers  
3 to the police department. It is very difficult to keep  
4 officers in the Baltimore City Police Department. And this is  
5 not just for us, this is happening across the country. All  
6 police departments are experiencing this.

7 We are concerned today about Baltimore. What are we  
8 going to do for Baltimore? And the community is giving us the  
9 answers. They want us to take new and different and  
10 constitutional solutions that will make this city safe.  
11 That's why the United Baptist Ministry Convention has said,  
12 and you're right, it's more than 100 churches that spoke out  
13 through a letter saying, please use this program. We had the  
14 community meetings. We went Facebook Live because we had to.  
15 We had to do that. And by going on Facebook live to talk  
16 about this program, we've been viewed by more than -- we've  
17 been more than 30,000 views.

18 Even before we started talking about this program,  
19 you will recall, Your Honor, that even before Commissioner  
20 Harrison was presented to the City Council for approval for  
21 consideration and approval as Baltimore City's new police  
22 commissioner, he did a complete tour of Baltimore City's many,  
23 many communities. And at those meetings all issues related to  
24 the police department were raised. And as he states in his --  
25 in our papers, a number of people said we need the AIR

1 surveillance program. It was known at the time. And people  
2 were asking that this program not just be brought back, but be  
3 brought back quickly.

4 And it is unusual that a community, community  
5 leaders, the Greater Baltimore Committee, and Baltimore  
6 churches combine to voice support for any one thing. That's  
7 unusual. It is unusual for Governor Hogan, our governor to  
8 express support for programs in Baltimore that we believe will  
9 be effective. I believe that we have an unusual alignment of  
10 new stars that say use this program. Put it into effect. Try  
11 it. Let's see if it works. The time is now. That is really  
12 the overwhelming human cry out of Baltimore. That is the  
13 overwhelming, irrefutable public interest. It cannot be  
14 achieved by not permitting this program to go forward. And it  
15 is for this reason that we ask that the programs do go  
16 forward. Thank you.

17 THE COURT: All right. Thank you all very much.  
18 And, again, I have before me a motion for preliminary  
19 injunction here. And it's analyzed under Rule 65 of the  
20 Federal Rules of Civil Procedure. This form of injunctive  
21 relief is an extraordinary remedy to be exercised essentially  
22 very sparingly and in limited circumstances, as the 4th  
23 Circuit has held in cases that involves the very far reaching  
24 power here of this Court. And in determining whether or not  
25 the issue at preliminary injunction I follow the test set

1     forth in *Winter versus Natural Resources Defense Council* and  
2     the four factors that I have previously listed. And,  
3     essentially, the heavy burden on the plaintiffs is to make a  
4     clear showing of likelihood to succeed on the merits. And  
5     because preliminary injunction is an extraordinary remedy it  
6     may only be awarded on a clear showing that plaintiff is  
7     entitled to such relief. And such an injunction is not  
8     granted as a matter of course. And whether to grant such a  
9     preliminary injunction remains in the equitable discretion of  
10    this Court.

11           That's what's before me now. And I promise you all  
12    that I will get on this right away. I literally talked to  
13    counsel the day this thing was filed, the day this thing was  
14    filed, April the 9th. And I want to thank the lawyers for  
15    their high quality of briefing and the high quality of the  
16    arguments here. We've gone for over two hours and now the  
17    ball is in my court. And I will abide by that and I promise  
18    you that I will have a written opinion on this matter and file  
19    it by 5:00 o'clock this Friday, April the 24th.

20           Just so the record is clear, this doesn't -- I'm not  
21    determining the overall case now. I'm dealing with a question  
22    of preliminary injunctive relief at this time. And so with  
23    that, unless there's anything further from the point of view  
24    of the plaintiffs or the defendants, we will conclude this  
25    call.

1           Again, I want to thank the clerk's office here,  
2           Felicia Cannon and Catherine Stavlas, and their staff for  
3           coordinating this. I want to thank my law clerk, Anthony  
4           Vitti, being off site coordinating this call. And I want to  
5           our lead administrative court reporter Christine Asif for her  
6           work on this today. Again, we're all remotely off site here.

7           Is there anything further from the point of view of  
8           the plaintiffs before we call this to a conclusion?

9           MR. KAUFMAN: Nothing further, Your Honor.

10          MS. GORSKI: No, thank you.

11          THE COURT: Anything further from the point of view  
12          of the defendants?

13          MS. MOORE: Your Honor, I left out a very important  
14          constituency that is driving us to pursue this program, and  
15          that is the families who have suffered grievous losses and  
16          injuries to violent crime in Baltimore. They are crying for  
17          us to find a solution. And they are asking that we use this  
18          program. And I apologize for forgetting to include them.

19          THE COURT: That's all right. I'm sure they all  
20          realize that.

21          MS. MOORE: Thank you.

22          THE COURT: Okay. Thank you all very much. And  
23          with that, this will conclude the telephone conference today  
24          on this matter, leaders of a Beautiful Struggle versus  
25          Baltimore City Police Department, civil number RDB-20-0929.



1 Thank you all very much.

2 MS. GORSKI: Thank you, Your Honor.

3 MR. KAUFMAN: Thank you, Your Honor.

4 MS. MOORE: Thank you, Your Honor.

5 MS. WALDEN: Thank you, Your Honor.

6 (The proceedings were concluded.)

7  
8 I, Christine Asif, RPR, FCRR, do hereby certify that  
9 the foregoing is a correct transcript from the stenographic  
10 record of proceedings in the above-entitled matter.

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Christine T. Asif  
Official Court Reporter

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